## Norakhmar bt Baharom and Anor v Lee Ming Leong & Ors

HIGH COURT (KUALA LUMPUR) — SAMAN PEMULA NO D8–24–355 OF 2006
KANG HWEE GEE J
21 JUNE 2007

*Companies and Corporations — Directors — Duties — Duty to declare conflict — Whether director held any office whereby duties or interests might be created in conflict with the duties or interests of a director*

*Companies and Corporations — Directors — Bankruptcy — Whether a bankrupt can hold office*

The plaintiffs being the present company secretaries of Mismanis Sdn Bhd ('the Company'), filed an originating summons under s 162 of the Companies Act 1965 ('the Act') seeking declarations that the first and second defendants are not secretaries of the Company, to remove the fourth defendant as a director effective from 10 September 1992 (being the date he was adjudged bankrupt) and to expunge all documents filed by the first to fourth defendants with the Companies Commission of Malaysia ('CCM') (or Suruhanjaya Syarikat Malaysia). The first to fourth defendants filed an application to strike out the originating summons.

**Held,** dismissing the striking out application and allowing the originating summons in part:

(1) There is no provision under the law for expunging documents filed at the CCM. The CCM, apart from its many other functions, is a depository of company documents which members of the public may have access to. Any documents filed with the CCM must remain with the CCM save that under s 11(10) of the Act, any person aggrieved by the decision of the Registrar of Companies to accept or reject documents filed with the registry may within 30 days of the decision of the registrar apply to the court to challenge the decision of the registrar. Where no court application has been initiated under this provision, the documents will have to remain as a permanent record at the CCM (see para 10).

(2) It follows, therefore, that the plaintiffs' application to expunge those documents already filed by the company during the directorship of the fourth defendant is misconceived (see para 11).

(3) There are no grounds to seek the removal of the company secretaries appointed by the fourth defendant director. It is clear that under s 127 of the Act, despite the incapacity of the fourth defendant as a director, the appointment of the company secretaries would remain valid (see para 12).

(4) Section 125 of the Act clearly prohibits a person who is a bankrupt from acting or continuing to act as a director. Further, art 72(b) of the Articles of Association of the Company states specifically that the office of a director who is adjudged bankrupt shall automatically be vacant. The plaintiffs are therefore justified in seeking a declaration that the fourth defendant be declared incompetent to act as director for the period that he was adjudged a bankrupt (see para 13).

(5) The fourth defendant had not vacated his position despite being adjudged bankrupt. His incompetency may have far reaching consequences not merely at the time he acted as director but later with respect to any act done by him during his tenure which may one way or another affect the company's relationship with third parties, subject only to the limitation imposed under s 127 of the Act. Further a bankrupt who acts or continues to act as a director commits a criminal offence under the same section (see para 14).

(6) There shall be a declaration that the fourth defendant was from the period 10 September 1992 to 24 November 1992, when he was a bankrupt, incompetent to act as a director of the company and that his post pursuant to art 72(b) was vacated (see para 15).

**[Bahasa Malaysia summary**

Plaintif yang merupakan setiausaha syarikat pada masa ini kepada Mismanis Sdn Bhd ('Syarikat') memfailkan saman pemula di bawah s 162 Akta Syarikat 1965 ('Akta') menuntut perisytiharan-perisytiharan bahawa defendan pertama dan kedua bukan setiausaha kepada Syarikat, mengeluarkan defendan keempat sebagai pengarah berkuatkuasa daripada 10 September 1992 (tarikh di mana ia telah dihakimi bankrap) dan memadamkan kesemua dokumen-dokumen yang telah difailkan oleh defendan pertama sehingga keempat dengan Suruhanjaya Syarikat Malaysia ('SSM'). Defendan pertama sehingga keempat memfailkan satu permohonan untuk membatalkan saman pemula.

**Diputuskan,** menolak permohonan pembatalan dan membenarkan sebahagian saman pemula:

(1) Tiada peruntukkan di bawah perundangan untuk memadamkan dokumen-dokumen yang telah difailkan di SSM. SSM, selain daripada fungsi-fungsi lain, adalah sebagai penerima dokumen-dokumen syarikat yang mana orang-orang awam mempunyai hak mencapainya. Sebarang dokumen-dokumen yang difailkan dengan SSM hendaklah berada dengan SSM sebagaimana s 11(10) Akta, seseorang yang tertindas dengan keputusan pendaftar syarikat untuk menerima dan menolak pemfailan dokumen-dokumen dengan pendaftaran hendaklah dalam tempoh 30 hari daripada keputusan pendaftar memohon kepada mahkamah untuk mencabar keputusan pendaftar. Jika tiada permohonan kepada mahkamah dibuat di bawah peruntukkan ini, maka dokumen-dokumen akan kekal berada di dalam rekod tetap di SSM.

(2) Ianya diikuti dengan itu bahawa permohonan plaintif untuk memadamkan dokumen-dokumen tersebut telahpun difailkan oleh syarikat semasa defendan keempat menjadi pengarah adalah tanggapan yang salah.

(3) Tiada alasan untuk memohon untuk mengeluarkan setiausaha-setiausaha yang dilantik oleh pengarah iaitu defendan keempat. Ia adalah jelas di bawah s 127 Akta walaupun ketidakupayaan defendan keempat sebagai pengarah, perlantikkan setiausaha-setiausaha syarikat kekal sah.

(4) Seksyen 125 Akta secara jelasnya melarang seseorang yang telah bankrap untuk bertindak atau terus bertindak sebagai pengarah. Selanjutnya, Artikel 72 (b) Tataurusan Persatuan menyatakan secara spesifik bahawa pejabat pengarah yang dihakimi bankrap sepatutnya secara automatik menjadi kosong. Plaintif, oleh itu adalah bertepatan untuk memohon perisytiharan bahawa defendan keempat diisytiharkan tidak berkemampuan bertindak sebagai pengarah untuk tempoh ia telah dihukum bankrap.

(5) Defendan keempat tidak mengosongkan jawatannya walaupun telah dihukum bankrap. Ketidakmampuannya akan menyebabkan kesan-kesan yang amat mendalam bukan hanya semasa beliau bertindak sebagai pengarah tetapi kemudiannya berkenaan dengan tindakannya semasa tempoh jawatan yang mana telah memberikan kesan kepada hubungan Syarikat dengan pihak-pihak ketiga, tertakluk kepada pembatasan yang dikenakan di bawah s 127 Akta. Selanjutnya, si bankrap yang bertindak atau berterusan bertindak sebagi pengarah telah melakukan kesalahan jenayah di bawah seksyen yang sama.

(6) Perlunya satu perisytiharan bahawa defendan keempat seharusnya antara tempoh 10 September 1992 sehingga 24 November 1992 apabila beliau seorang bankrap adalah tidak berkemampuan bertindak sebagai pengarah dan jawatannya menurut Artikel 72(b) mestilah dikosongkan.]

**Notes**

For the case on bankruptcy of directors, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) para 160.

For cases on duties of directors, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 186–194.

**Cases referred to**

*Ahmad Saidi bin Md Isa v Timbalan Menteri Hal Ehwal & Ors* [2006] 3 MLJ 208 (refd)

*Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244 (refd)

*Chin Sow Chee v Lee Chee Omnibus Co Ltd & Ors* [1969] 2 MLJ 202 (refd)

*Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489 (refd)

*Imtiaz Ahmad v Ghulam Ali PLD* [1963] SC 382 (refd)

*Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789 (refd)

*Lim Eng Kay v Jaafar bin Mohamed Said* [1982] 2 MLJ 156 (refd)

*Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, Proposed Intervenors)* [2004] 3 MLJ 301 (refd)

*Othman v Mek* [1972] 2 MLJ 158 (refd)
*Tan Chwee Geok & Anor v Khaw Yen-Yen & Anor* [1975] 2 MLJ 188 (refd)
*United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2001] 1 MLJ 561 (refd)

**Legislation referred to**

Companies Act 1965 ss 11(10), 125, 127, 141, 141(6), 141(8), 162
Rules of the High Court 1980 O 18 r 19

*Moses Susayan (Moses Susayan & Associates) for the plaintiff.*
*Mohamad Faisal, Max Tai (Shook Lin & Bok) for the fourth defendant.*
*Mohd Sufyan bin Mohd Mokhtar for the fifth defendant.*

**Kang Hwee Gee J (oral judgment delivered immediately after submission):**

**[1]** This is my oral judgment: (ex-tempore)

**[2]** There are two enclosures in this proceeding.

**[3]** Enclosure 1 is an application purportedly made under s 162 of the Companies Act 1965 for the following orders:

(a) A declaration that the first and the second defendants of the third defendant company are not secretaries of Masmanis Sdn Bhd.

(b) A declaration that the fourth defendant effective from 10 September 1992 is removed as a director of Masmanis Sdn Bhd and all actions or dealings or transactions carried out by the fourth defendant as director of Masmanis Sdn Bhd from 10 September 1992 are null and void.

(c) An order that the fifth defendant (previously the ROC now Suruhanjaya Syarikat Malaysia or Companies Commission of Malaysia) ('CCM') removes and/or expunges from the company record all documents or forms filed by the first to the fourth defendants.

(d) An order that the plaintiff be allowed to update the company record of Masmanis Sdn Bhd with the fifth defendant.

(e) Any further reliefs the Court deems fit.

**[4]** Enclosure 15 is an application by the first to the fourth defendants to strike out the plaintiffs' application in encl 1.

**[5]** By reason that the issues in both enclosures are the same, both the applications should be heard together but arguments must first be addressed on the issues in encl 15. Should it be clear that the application in encl 1 is unsustainable then it follows as a matter of course that the court need not proceed to hear encl 1.

**[6]** The grounds on which the first to the fourth defendants rely to strike out under O 18 r 19 of the Rules of the High Court 1980 ('the RHC') are as follows: (verbatim)

(1) The plaintiffs' application does not disclose a reasonable cause of action. The plaintiff is seeking to expunge from the register in the ROC Form 49 dated 31 October 2001 and 13 April 2002 which were filed by the first, second and third defendants (third defendant is a nominal company formed by first and second defendants) who were themselves company secretaries for the plaintiffs at the material time.

(2) The plaintiffs are the present company secretaries of the company and they have in fact filed a new Form 49 to change the directorship of the company as well as the shareholding of the company and also the change of company secretaries.

(3) By filing the said Form 49 the company has in fact replaced the management structure of the company to be approved by the ROC and this has been approved by the ROC. My client the fourth defendant, his wife and his two sons are no longer the directors of the company.

(4) As Form 49 had been substituted the plaintiffs'application does not disclose any cause of action. Note that the new Form 49 was submitted by the plaintiffs themselves (the present company secretaries).

Submits: Clearly there is no reasonable cause of action to file this Originating Summons.

(5) This application is frivolous, vexatious and an abuse of the process of court as there are contentious issues involving the management structure of the company which is being litigated in another suit No D2–2–875–2002 (KL D2 suit) where there were allegations of fraud being committed by the plaintiffs amongst others. The D2 suit involves the same subject matter as in this present suit (see annexed pleading in encl 4 and encl 5 of the affidavit in reply of my client showing the D2 pleading. Properly this action should not have been brought in a summary manner by originating summons as it involves issues of fraud and breach of trust.

Submits: All the present issues brought by the plaintiffs in this originating summons should be properly brought in the D2 suit. The bringing of this originating summons in this court is an abuse of process.

(6) The plaintiffs had taken over the company in 2002 going by the Form 49 and yet commenced the present application in 2006.

(7) Section 162 of the Companies Act 1965is purely the summary procedure for rectification of the members' register of the company and is not available to the plaintiffs to purportedly expunge Form 49 from the Registrar of Companies which the plaintiffs are doing in this case.

[7] Reply by counsel for the plaintiffs: (verbatim)

(1) The cause of action in this suit is for an order from this court to expunge three documents from the ROC now known as SSM (Suruhanjaya Syarikat Malaysia) which was lodged in the first place by fraudulent means. These documents were:

(i) Borang 49 (31 October 2001)

(ii) Borang 11 (31 October 2001)

(2) The basis of the documents of wanting to expunge are:

(i) The company secretaries namely defendant one and defendant two of defendant three company were not duly appointed at the material time.

(ii) Form 11 which was signed by the director lacks capacity as a director because he was adjudged a bankrupt at the time when he was a director.

(iii) The purported appointment by Masmanis Sdn Bhd of third defendant as 'Secretarial Agent' in early September 2001 is an appointment which is not provided for under the Companies Act. There is no such provision in the Companies Act. They are performing the function of secretaries.

(iv) The defendants themselves ie defendants one to four admit that defendants one and two of defendant three were appointed as company secretaries on 27 December 2001.

(3) The plaintiffs were the secretaries of Masmanis Sdn Bhd before the alleged appointment of defendant one and defendant two of the third defendant company. This is true for the period between 8 October 1991 to 31 October 2001.

(4) Article 72(b) of the Articles of Association provides that in the instance a director is adjudged a bankrupt his office would be vacated.

(5) The company Masmanis Sdn Bhd itself had on 4 March 2002 filed a suit D6-22-340-2002 seeking declarations that the plaintiffs in this suit have ceased as company secretaries and that the defendants one and two of the third defendant are the current secretaries. This suit was discontinued. This means that they have accepted the present secretaries as the legitimate company secretaries for all times and therefore the documents filed by the first and second defendants are to be expunged.

(6) The D2 suit No 22-875-2002 was filed by the fourth defendant, his wife and his children which materially involves disputes on shareholdings of defendant four in Masmanis Sdn Bhd (p 26 para 15 of fourth defendant's affidavit in encl 5). The present suit has no relevance to the D2 suit.

Submits:

(i) Plaintiffs' case is rather simple. We want this court to remove those documents filed by the first and second defendants who were not the company secretaries.

(ii) The appointment of the first and second defendants by the fourth defendant by instruction is also not valid because his office had been vacated as a result of being adjudged a bankrupt.

(iii) This application by the plaintiffs ie to expunge documents is with the consent of the fifth defendant (ROC) to go by way of s 162 of the Companies Act.

(iv) Section 141 paragraph 8 of the Companies Act gives provision that documents that are filed with the ROC should be taken as evidence of facts stated therein.

(v) Article 72(b) provides for automatic vacation of the director's position upon him being bankrupt and there was no appointment made after him. A

(vi) In answer to s 127, s 127 says the act of a director but in this case he is no longer the director. Therefore, we humbly submit that s 127 talks about acts of a director does not apply in this case as the fourth defendant's office was vacated automatically (see *Ng Kim Moi & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, Proposed Intervenors)* [2004] 3 MLJ 301 per Gopal Sri Ram JCA at 319–321 on procedure: B

> The position then is this. The appellants have made out a clear case of deprivation of their land in violation of the provisions of written law. But, because of the way in which their pleading has been settled, they are not entitled to the principal reliefs they claim. Does it then follow that they are to leave the precincts of this court bereft of any remedy for the wrong they have suffered? If that be so then there is something terribly wrong with our justice system. C
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> But I do not apprehend that to be the case. The law is not so impotent that it will let an injustice pass by while having its limbs bound by procedural technicalities. As Ong Hock Sim FJ said in *Othman v Mek* [1972] 2 MLJ 158: D
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> ... it is the duty of the courts to exercise the utmost diligence in applying the maxim ubi jus ibi remedium, so that justice shall be done, unless we are strictly constrained by law to uphold any decision which results in injustice. E

The attitude of our courts to legal technicalities is summed up in the following passage in the judgment of Ahmad Fairuz JCA (now Chief Justice) in *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2001] 1 MLJ 561 at p 565 where his lordship collected the authorities on the subject:

> Our Federal Court in the case of *Tan Chwee Geok & Anor v Khaw Yen-Yen & Anor* [1975] 2 MLJ 188 at p 189 said: F
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> The Rules of the Supreme Court are intended to facilitate, not impede, the administration of civil justice In the bad old days in England from where we took our Rules, if you put a comma wrong you were thrown out of court, so strict were they about technicalities. But over the years this strictness gave way to common sense, and every time the Rules were amended it was with the object of removing fussy technicalities, and making it easier for parties to get justice. This changed attitude was reflected in the remarks of Lord Collins MR about 70 years ago in *Re Coles and Ravenshear* [1907] 1 KB 1: G
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> Although a court cannot conduct its business without a code of a procedure, the relation of the rules of practice to the work of justice is intended to be that of handmaid rather than mistress; and the court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case. (emphasis added.) H
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> And in the same case, Ali FJ, said (at p 192):
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> The general principle, I think, is that rights of parties in an action are not to be defeated by technical objections. I
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> In this connection, we would also like to quote what this court had said in *Boustead Trading* (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331 at p 342, ie:

> ... After all, courts exist to do justice according to the law as applied to the substantial merits of a particular case... (emphasis added.)
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> Kaikaus J, in *Imtiaz Ahmad v Ghulam Ali PLD* [1963] SC 382 at p 400 said:
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> Any system which by giving effect to the form and not to the substance defeats substantive rights is defective to that extent. The ideal must always be a system that gives to every person what is his. (emphasis added.)
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> Bearing in mind the abovementioned authorities, I feel that the preliminary objection should not be allowed. The objection is indeed on a mere technicality.

So, the fact that a plaintiff claims the wrong relief or does not claim the correct relief does not bar the court from granting the relief appropriate to the particular circumstances to prevent injustice by acting under the prayer for further or other relief.

Thus, in *Lim Eng Kay v Jaafar bin Mohamed Said* [1982] 2 MLJ 156 at p 160, Salleh Abas FJ (as he then was) said:

> We cannot see how the respondent should be deprived of his right by a purely technical error on the part of his solicitors, who were not up-to-date with this aspect of legal technicalities. In any case prayer (e) in paragraph (7), 'Any other relief which this Honourable Court deem fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning.

Further, this court has ample jurisdiction and power under s 69(4) of the Courts of Judicature Act 1964 to 'make any order which ought to have been given or made, and make such further or other orders as the case requires'. These words which were adopted, with slight inconsequential variation in language, from O 41 r 33 of the Indian Civil Procedure Code 1908 empowers this court to do complete justice between the parties (see *Harris Solid State (M) Sdn Bhd & Ors v Bruno Gentil s/o Pereira & Ors* [1996] 3 MLJ 489; *Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Noh* [1997] 1 MLJ 789.

Acting on the foregoing authorities, it is plain that this court is empowered to grant the appellants such relief as is appropriate in law to do justice in accordance with the circumstances of the case. Now, this is a case in which, I have already said, the appellants were deprived of their land in violation of the provisions of the Act. In other words the deprivation here was not in accordance with the provisions of written law and therefore contravenes art 13(1) of the Federal Constitution.'

We urged your Lordship to allow for this application and for your Lordship to exercise the prayers and other reliefs for an order to expunge the documents.

**[8]** The application is opposed on the following grounds: (verbatim)

(1) There exists the D2 suit in which the issues with regards to the directorship of the company are being litigated. This involves my client's allegation on fraud committed by the plaintiffs herein. The D2 suit is where all the allegations put forward by the plaintiffs herein can be properly litigated by way of documents and oral testimonies.

(2) This application before your Lordship was brought subsequent to my client instituting the D2 suit. This application was brought about pursuant to s 162. I submit it is not applicable to the prayers sought about by the plaintiffs for two reasons:

(i) Section 162 of the Companies Actis in respect of rectification of members register and not in respect of expunging any company secretarial documents filed with the ROC.

(ii) Section 162 is also a summary procedure where only affidavit evidence is introduced. In this regard the subject company was a company run by my client's family. My client, the fourth defendant was not the only director at the material time. His wife and his sons were also directors of the company. As alleged in the D2 suit the plaintiffs together with other individuals named as defendants in the D2 suit have committed fraud on my client and his family in transferring the shares of the company to themselves. D2 suit being a writ action is the proper forum to litigate on this issue.

(3) The plaintiffs' application to expunge documents filed with the ROC is alien to our body of law. The proper remedy that is available to them and to which they have availed themselves to are pursuant to s 141(6) and s 141(8) of the Companies Actwhereby subsequent company secretarial forms filed with the ROC will replace and supercede any earlier return filed with the ROC.

(4) The prayers sought by the plaintiffs are academic in nature and pursuant to the case of *Ahmad Saidi bin Md Isa v Timbalan Menteri Hal Ehwal & Ors* [2006] 3 MLJ 208 which is found at p 61 of the Defendants' Bundle of Authorities. The court will not act in vain nor would it grant academic judgment. In this regard all the prayers asked by the plaintiffs are academic in that:

(i) the first prayer is for a declaration that the first and second defendants of the third defendant company are not secretaries of Masmanis Sdn Bhd. This prayer is academic as the plaintiffs are presently the company secretaries of Masmanis Sdn Bhd (see s 127 of the Companies Act 1965providing for continuity of acts of the company where it was subsequently found that the directors lack qualification to act for the company);

(ii) The declaration effective from 10 September 1992 the fourth defendant is removed as director of Masmanis and all actions or dealings or transactions carried out by the fourth defendant as director of Masmanis Sdn Bhd from 10 September 1992 is null and void. Pursuant to s 127 this cannot be done.

(5) Plaintiffs brought this action late despite filing new Form 49 on 12 April 2002. Therefore, this application must fail as a result of the unexplained delay. In this regard, I would like to refer to the case of *Chin Sow Chee v Lee Chee Omnibus Co Ltd & Ors* [1969] 2 MLJ 202 at p 13 of the defendants' bundle of authorities wherein dealing with a similar s 162 application, the court disallowed the application on the basis there was a delay of two years. The similar position can be seen in the case of *Central Securities (Holdings) Bhd v Haron bin Mohamed Zaid* [1979] 2 MLJ 244 which is a Federal Court

decision where it is held delay in bringing an action under s 162 of the Companies Act is fatal. There is a delay of five years in bringing this action.

Encik Mohd Sufyan for fifth defendant (ROC) on the powers of the court to expunge records of the ROC (see s 11(10) of the Companies Act 1965). The power of the court to expunge is not alien to our law.

FINDINGS AND DECISION

**[9]** It is clear that in this application the plaintiffs are not only seeking to expunge the documents filed by the company under the directorship of fourth defendant bankrupt director but also to seek the removal of the director himself and the company secretaries appointed by him.

**[10]** I would agree entirely with the submission of counsel for the defendants that there is no provision under the law for expunging documents filed at the CCM [instead of ROC used earlier in judgment]. It must be appreciated that the CCM, apart from its many other functions, is a depository of company documents which members of the public may have access to. Any documents that are filed with the CCM must remain with the CCM save that under s 11(10) of the Act any person aggrieved by the decision of the Registrar of Companies to accept or reject documents filed with the registry may within 30 days of the decision of the registrar apply to the court to challenge the decision of the registrar. Where no court application has been initiated under this provision, the documents will have to remain as a permanent record at the CCM.

**[11]** It follows therefore the plaintiffs' application to expunge those documents already filed by the company during the directorship of the fourth defendant is misconceived.

**[12]** I am also in full agreement with the submission of counsel for the defendants that there are no grounds now to seek the removal of the company secretaries appointed by the fourth defendant director as it is clear that under s 127 of the Act, despite the incapacity of the fourth defendant as a director, the appointment of the company secretaries would remain valid.

**[13]** With respect to the competency of the fourth defendant as a director of the company while being a bankrupt, I accept the submission of counsel for the plaintiffs that he ought not to have been in that position. Section 125 of the Act clearly prohibits a person who is bankrupt from acting or continuing to act as a director. Indeed art 72(b) of the Articles of Association states specifically that the office of a director who is adjudged bankrupt shall automatically be vacant. The plaintiffs are therefore justified in seeking a declaration that the fourth defendant be declared incompetent to act as director for the period that he was adjudged a bankrupt.

**[14]** The declaration sought is not academic. The fourth defendant had not vacated his position despite being adjudged bankrupt. His incompetency may have far reaching consequences not merely at the time he acted as director but later with

respect to any act done by him during his tenure which may one way or another affect the company's relationship with third parties, subject only to the limitation imposed under s 127 of the Act. Further, a bankrupt who acts or continues to act as a director commits a criminal offence under the same section.

**[15]** There shall be a declaration that the fourth defendant was between the period of 10 September 1992 to 24 November 1992 when he was a bankrupt, incompetent to act as a director of the company and that his post pursuant to art 72(b) was vacant.

**[16]** There shall be no order as to costs of this application (encl 1).

**[17]** Enclosure 15 is dismissed with costs.

*Enclosure 15 dismissed with costs.*

Reported by Lee Shih